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[*Bittner v. Fuel Economy Contracting Company*](#), 88-ERA-22 (Sec'y June 28, 1990)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: June 28, 1990
CASE NO. 88-ERA-22

IN THE MATTER OF

MICHAEL BITTNER,
COMPLAINANT,

v.

FUEL ECONOMY CONTRACTING
COMPANY AND OMAHA
PUBLIC POWER DISTRICT,
RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

ORDER APPROVING SETTLEMENT AGREEMENT

AND DISMISSING COMPLAINT

In response to my orders of May 25, 1989, and December 13, 1989, counsel for the Complainant and counsel for the Respondents have submitted a copy of the Settlement Agreement and General Release entered into between the parties on July 11, 1988. The Settlement Agreement and General Release has been reviewed in order to determine whether the terms thereof are a fair, adequate and reasonable settlement of the complaint in this case.

Paragraph 6 of the Settlement Agreement and General Release encompasses matters arising under laws other than Section 210 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), pursuant to which the complaint in this case was brought. My authority over this settlement agreement is limited to matters arising under the ERA. *See Goese v. EBASCO Services Inc.*, Case No. 88-ERA-25, Sec. Order Approving Settlement and Dismissing Case, Dec. 8, 1988, slip op. at 1-2; *Poulos v.*

Ambassador Fuel Oil Co. Inc., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2 and cases cited therein. Accordingly, I have limited my review of the Settlement Agreement and General Release to determining whether terms and conditions therein are a fair, adequate and reasonable settlement of

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Complainant's allegation that Respondent violated the ERA.

Paragraph 3 provides that payment to Respondent under this agreement constitutes full settlement of all claims "that have been asserted or may be asserted by Bittner against OPD or FEC." This paragraph could be construed as a waiver by Complainant of any causes of action he may have which may arise in the future. I interpret this provision as limited to the right to sue in the future on claims or causes of actions arising out of facts or any set of facts occurring before the date of the agreement. *See Polizzi v. Gibbs and Hill*, Case No. 87-ERA-38, Sec. Order Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing Case, July 18, 1989, slip op. at 9 and cases cited therein.

Paragraph 8(e) requires that, if Complainant is rehired at Omaha Public Power District and again believes he is discriminated or retaliated against, Complainant will notify Respondents of the alleged retaliation and give them an opportunity to address the problem before taking legal or administrative action. Since, under the ERA, a Complainant has only 30 days from the date of the alleged discrimination to file a complaint with the Department of Labor, I interpret this provision as not restricting Complainant from filing a complaint under the ERA to protect his rights and to notify the Department of Labor of such violations of the Act while Respondents take steps they consider appropriate to resolve the matter.

With the limitations set forth herein, I find the terms of the agreement to be fair, adequate and reasonable and, therefore, approve the Settlement Agreement and Release.

Accordingly, the complaint in this case is DISMISSED WITH PREJUDICE. See Complainant's Request to Enter Dismissal With Prejudice.

SO ORDERED.

ELIZABETH DOLE
Secretary of Labor

Washington, D.C.